

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically at the time and date indicated, which may be materially different from its entry on the record.



Dated: 12:37 PM March 10, 2015



Russ Kendig
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:) CHAPTER 7
)
MARTIN L. MYERS,) CASE NO. 11-61426
)
Debtor.) JUDGE RUSS KENDIG
)
) **MEMORANDUM OF OPINION**
) **(NOT FOR PUBLICATION)**

Now before the court is a joint motion by Anthony J. DeGirolamo, chapter 7 trustee ("Trustee"), and Karen Myers ("Mrs. Myers"), Debtor's wife, for reconsideration/rehearing of the court's denial, issued on January 29, 2015, of a joint motion to compromise. A creditor, MD Acquisition, LLC ("MDA"), opposes the motion.

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

DISCUSSION

In their quest for rehearing, Trustee and Mrs. Myers rely on Federal Rule of Bankruptcy Procedure 9023, which incorporates, with some modification, Federal Rule of Civil Procedure 59 into bankruptcy practice. The decision whether to grant a Rule 9023 motion is within the

discretion of the court. Triad Int'l Maint. Corp. v. Southern Air Transp., Inc., 2006 WL 1071879 (S.D. Ohio 2006) (citing Huff v. Metro. Life Ins. Co., 675 F.2d 119, 122 (6th Cir. 1982)). Although viewed as an extraordinary remedy, reconsideration may be appropriate “(1) to accommodate an intervening change in controlling law, (2) to account for newly discovered evidence, (3) to correct a clear error of law, or (4) to prevent manifest injustice.” Id. at *1.

As Trustee and Mrs. Myers point out, the court openly permitted reconsideration of the joint motion to compromise. The last line of the court’s opinion states “If he so desires, Trustee may resubmit the same proposal or a different proposal, but additional reasoning and background must be provided as outlined above.” In re Myers, Case No. 11-61426, *11 (Bankr. N.D. Ohio Jan. 29, 2015). This invitation was partially based on the court’s adoption of a standard to be used when the settlement of a § 727 action is at issue. It also acknowledged the limited concerns of the objecting parties on the lack of foundation on the collectability issue. Although the open invitation from the court to refile the motion to compromise may technically moot this motion for rehearing, the court will nonetheless grant the relief requested. The hearing scheduled on **March 16, 2015** at **3:00 p.m.** will be converted into a telephonic pretrial conference to discuss a date for the rehearing, as well as the parameters for the rehearing, including number of witnesses, type of testimony, additional time or briefing needed prior to the hearing, and other pertinent matters. The pretrial conference will be held in the Courtroom, United States Bankruptcy Court, 401 McKinley Ave., S.W., Canton, Ohio. The parties may participate telephonically by calling the court before the end of business on Friday, March 13, 2015 to provide a non-cellular number for the court to use in placing the call.

A separate order will be issued immediately.

#

Service List:

Joel K Dayton
Randolph L. Snow
Chrysanthé E. Vassiles
Black, McCuskey, Souers and Arbaugh
220 Market Ave., South, Suite 1000
Canton, OH 44702

G. Christopher Meyer
Peter R. Morrison
Squire Patton Boggs (US) LLP
127 Public Square, Suite 4900
Cleveland, OH 44114-1304

John R. Gall
Aneca E. Lasley
Heather L. Stutz
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 S. High St.
Columbus, OH 43215

Marc Merklin
Kate M Bradley
Brouse McDowell, LPA
388 S. Main Street, Suite 500
Akron, OH 44311

Rhiel & Associates Co LPA
Susan L. Rhiel
394 East Town Street
Columbus, OH 43215